



## **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

### **5 CFR Part 6901**

**[DOCKET NUMBER - 2014-0001]**

**RIN 2700-AE03**

### **Supplemental Standards of Ethical Conduct for Employees of the National Aeronautics and Space Administration**

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Interim Rule with request for comments; amendments.

**SUMMARY:** The National Aeronautics and Space Administration (NASA), with the concurrence of the Office of Government Ethics (OGE), is amending the Supplemental Standards of Ethical Conduct for Employees of the National Aeronautics and Space Administration. The interim rule will permit student interns to seek prior approval to engage in outside employment with a NASA contractor, subcontractor, grantee, or party to a NASA agreement in connection with work performed by that entity or under that agreement. These amendments will clarify the types of outside employment activities that require approval; streamline the process for approval; eliminate obsolete position titles; and extend the permissible time period of approval.

**DATES:** *Effective Date:* [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. *Comment Date:* Comments must be received by [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]

**ADDRESSES:** Comments must be identified with RINs 2700-AE03 and may be sent to NASA via the Federal E-Rulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Please note that NASA will post all comments on the Internet with changes, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Adam F. Greenstone, Alternate Designated Agency Ethics Official, NASA Office of the General Counsel, 300 E. St. SW, Washington, DC 20546, 202.358.1775, [adam.f.greenstone@nasa.gov](mailto:adam.f.greenstone@nasa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

On August 7, 1992, OGE published the Standards of Ethical Conduct for Employees of the Executive Branch (OGE Standards). *See* 57 FR 35006-35067, as corrected at 57 FR 48557, 57 FR 52483, and 60 FR 51167, with additional grace period extensions for certain existing provisions at 59 FR 4779-4780, 60 FR 6390-6391, and 60 FR 66857-66858. The OGE Standards, codified at 5 CFR part 2635, effective February 3, 1993, established uniform standards of ethical conduct that apply to all executive branch personnel. Section 2635.105 of the OGE Standards authorizes an agency, with the concurrence of OGE, to adopt agency-specific supplemental regulations that are necessary to properly implement its ethics program.

In 1994, NASA, with OGE's concurrence, established supplemental standards of ethical conduct for NASA employees. *See* 59 FR 49335-49338 (Sept. 28, 1994), as codified at 5 CFR part 6901. NASA, with OGE's concurrence, now amends its supplemental standards of conduct as follows.

Under the existing regulation at 5 CFR 6901.103(c), NASA employees other than special Government employees are generally prohibited from engaging in outside employment with a NASA contractor, subcontractor, or grantee in connection with work performed by that entity for NASA; or a party to a Space Act agreement, Commercial Launch Act agreement, or other agreement to which NASA is a party pursuant to specific statutory authority, if the employment is in connection with work performed under that agreement. When 5 CFR 6901.103 became effective in 1994, NASA stated that outside employment with those entities would cause reasonable persons to question the impartiality and objectivity with which NASA programs are administered. As a result, student interns generally have been barred from employment with an entity performing work under a NASA contract, grant, or Space Act agreement in connection with that work. Consequently, these students may not perform NASA-related work at their home institutions. This prohibition prevents a graduate assistant, for example, from performing basic research in connection with a NASA-funded research program.

NASA now has concluded that the prohibition is unnecessarily broad, and that the integrity of NASA's operations will not be diminished by liberalizing the current prohibition to permit student interns to seek approval to engage in outside activities with these entities. Student interns typically perform basic research functions without substantial involvement in NASA decisions that affect outside entities, and often spend extended periods in leave without pay status during semesters when they carry a full-time academic workload. It is also vital that students in STEM (science, technology, engineering, math) disciplines have full access to NASA development opportunities to maintain U.S. leadership in these fields. For these reasons, NASA, with OGE's concurrence, is retaining but liberalizing this provision in a revised paragraph (c) of § 6901.103 to permit management to approve such activities of student interns when NASA

ethics officials determine that the activity would comply with Federal ethics laws and OGE regulations, to which employed student interns remain subject.

The interim rule makes a number of other minor revisions to clarify the rule and streamline the approval process. The interim rule tailors the approval requirement to engage in outside employment with an employee-owned business under § 6901.103(d)(3) to cases where the business performs or seeks to perform Federal government-related work. Likewise, the interim rule provides additional clarity to § 6901.103(d)(8) by describing the types of technical work that that would require approval.

Revised paragraph (g) of § 6901.103 streamlines the approval process by directing that employees must obtain approval from their supervisors. This revision provides efficiency by decentralizing the process for most career Senior Executive Service employees so that approval can be granted within their center, and specifies the approval authority for certain other senior officials who may not obtain approval within their center. The revision provides that all requests must also undergo legal review prior to approval. For example, requests from Center Directors and Deputy Center Directors must be approved by the Associate Administrator at NASA Headquarters, with legal review by the Headquarters General Counsel's Office. Requests from NASA Chief Counsel at field centers must also be reviewed by the Headquarters General Counsel's Office.

Finally, revised paragraph (g)(4) extends the maximum time for which approval may be granted from three to five years to provide further administrative efficiency in cases where the reviewing offices consider a longer approval period to be appropriate.

## **Regulatory Analysis Section:**

### **Administrative Procedure Act**

Pursuant to 5 U.S.C. 553(a)(2), (b), and (d), good cause exists for waiving the regular notice of proposed rulemaking, opportunity for public comment, and 30-day delayed effective date for final rule amendment because this rule applies solely to agency personnel, organization, practice, and procedure; and relieves overly broad restrictions on NASA student interns performing work at their home academic institutions and approval requirements on certain employee outside activities NASA has determined are not needed. NASA has, however, decided to publish the amendments as an interim rule so that public comments may be considered prior to issuing a final rule. Accordingly, it is in the public interest that these revisions take effect as an interim rule upon the date of publication of this Federal Register rulemaking document, and in issuing a final rule on this matter NASA will consider written comments submitted by [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

### **Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule would not have a significant economic

impact on a substantial number of small entities because this rule only pertains to NASA employees.

### **Executive Order 12866 and Executive Order 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if the regulation is necessary, to select the regulatory approach that maximizes net benefits. This rule is not a significant regulatory action under section 3(f) of Executive order 12866, Regulatory Planning and Review, because this rule relates solely to the internal operations of NASA. Therefore, the Office of Management and Budget did not review this rule.

### **Paperwork Reduction Act**

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this rule because it does not contain any information collection requirement that requires approval of the Office of Management and Budget.

### **Small Business Regulatory Enforcement Fairness Act**

This rule relates to agency management or personnel, and therefore the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) does not cover the interim rule.

### **Executive Order 13132, Federalism**

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among

the various levels of government. Therefore, in accordance with Executive Order 13132, Federalism, NASA has determined that the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

### **Unfunded Mandates Reform Act**

For the purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this rule would not significantly or uniquely affect small governments and would not result in increased expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more (as adjusted for inflation) in any one year.

### **List of Subjects in 5 CFR Part 6901**

Ethical conduct.

For the reasons discussed in the preamble, NASA, with the concurrence of OGE, amends 5 CFR part 6901 as follows:

### **Part 6901—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

1. The authority citation for part 6901 is revised to read as follows:

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 51 U.S.C. 20113(a); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403(a), 2635.802(a), 2635.803.

2. Revise paragraphs (b), (c), (d), (e), (f), and (g) of § 6901.103 to read as follows:

§ 6901.103     Outside employment.

\*       \*       \*       \*       \*

(b) *Definitions.* Unless a term is otherwise defined in this part, the definitions set forth in 5 CFR part 2635 apply to terms used in this section. In addition, for purposes of this section:

(1) *Outside employment* means any form of compensated or uncompensated non-Federal employment or business relationship involving the provision of personal services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless the organization is a prohibited source or unless such activities involve the provision of professional services or advice, or are for compensation other than reimbursement of expenses.

(2) *Profession* has the meaning set forth in 5 CFR 2636.305(b)(1).

(3) *Student intern* means a student employed through a student internship program implemented by the Office of Personnel Management (OPM).

(c) *Prohibited outside employment.* A NASA employee, other than a special Government employee or a student intern, shall not engage in outside employment with the following:



(1) A NASA contractor, subcontractor, or grantee in connection with work performed by that entity for NASA; or

(2) A party to a Space Act agreement, Commercial Launch Act agreement, or other agreement to which NASA is a party pursuant to specific statutory authority, if the employment is in connection with work performed under that agreement.

(d) *Prior approval for outside employment.* A NASA employee, other than a special Government employee, shall request and obtain approval before engaging in the following outside employment activities:

(1) Teaching, speaking, writing, or editing, unless the subject matter pertains to the private interests of the employee, such as a hobby, cultural activity, or a professional pursuit unrelated to the employee's official duties;

(2) The practice of a profession or the rendering of professional consulting services;

(3) The management or conduct of a business in which the employee or the employee's spouse has an ownership interest, if that business performs, or may seek to perform, work (other than routine consumer transactions) for the Federal Government or for a NASA contractor, grantee, or other party to an agreement with NASA;

(4) Holding State or local public office, whether by election or appointment;

(5) Employment with a NASA contractor, subcontractor, or grantee;

(6) Employment with a party to a Space Act agreement, Commercial Launch Act agreement, or other agreement to which NASA is a party pursuant to specific statutory authority;

(7) Serving as an officer, trustee, or member of a board, directorate, or other such body of a for profit organization or of a nonprofit organization that is a prohibited source; or

(8) Employment which involves the practice of a NASA-owned invention or the performance of experimental, developmental, research, design, or engineering work that relates to the official duties of such employee.

(e) *Prior approval requested by employee.* Even when not required by paragraph (d) of this section, a NASA employee may request prior approval using the procedures set forth in this section.

(f) *Form of request for approval.* A request for approval of outside employment shall be in writing and shall include the following:

(1) The employee's name and occupational title;

(2) The nature of the employment, including a full description of the specific duties or services to be performed and a statement explaining any relationship between the outside activity and the official duties of the employee;

(3) The name and address of the person or organization for which work will be done;

(4) The estimated total time that will be devoted to the activity. If the employment is on a continuing basis, indicate the estimated number of hours per year; for other employment, indicate the anticipated beginning and ending date;

(5) A statement as to whether the work can be performed entirely outside of the employee's regular duty hours and, if not, the estimated number of hours of absence from work that will be required;

(6) Whether the employee will receive compensation for the outside activity, and, if the employee is a covered noncareer employee as defined by 5 CFR 2636.303, the amount of compensation to be received; and

(7) A statement that the employee currently has no official duties involving a matter that affects the outside employer and will disqualify from future participation in matters that could directly affect the outside employer.

*(g) Approval of requests—* (1) When required to obtain approval prior to commencing outside employment pursuant to paragraph (d) of this section, a NASA employee shall receive approval from the employee's immediate supervisor. Additional authority to approve requests is as follows:

(i) Center Directors and Deputy Center Directors shall receive approval by the Associate Administrator;

(ii) Center employees shall receive approval from the Center Director or a person designated to act for the Center Director; and

(iii) Headquarters employees shall receive approval from the employee's Official-in-Charge.

(2) Prior to approval, the Office of the General Counsel shall review requests by Headquarters employees, Center Directors, Deputy Center Directors, and Center Chief Counsel. All other

requests shall be reviewed by the Center Chief Counsel's office, and for Office of Inspector General employees, by the Counsel to the Inspector General.

(3) *Standard for approval.* Approval will be granted unless a determination is made that the prospective outside employment is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part.

(4) *Scope of approval.* Approval will be for a period not to exceed five years. Upon a significant change in the nature or scope of the outside employment or in the employee's NASA position, the employee shall submit a revised request for approval.

(5) *Notification of approval or disapproval.* Employees will be notified in writing of the action taken on their requests.

(6) *Records of requests.* All requests for approval will be maintained in the local human resources/personnel office where the requesting employee works, or alternatively by the local NASA legal office upon the determination of the Center Chief Counsel and by the Office of the General Counsel upon the determination of the General Counsel.

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